

Legal Department

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The Verizon logo, featuring a large checkmark above the word "verizon" in a bold, sans-serif font.

2003 OCT 20 P 3:47

PUBLIC UTILITIES
COMMISSION

Verizon Hawaii Inc.
P.O. Box 2200
Honolulu, HI 96841

Phone 808.546.3606
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October 20, 2003

WRITER'S DIRECT DIAL NUMBER:

808-546-2898

Public Utilities Commission
of the State of Hawaii
465 South King Street
Honolulu, Hawaii 96813

Re: Docket No. 03-0272; In the Matter of Public Utilities Commission Instituting a Proceeding to Implement the Federal Communication Commission's ("FCC") *Triennial Review Order*, FCC No. 03-36.

Honorable Commissioners:

On September 29, 2003 in response to the Federal Communication Commission's ("FCC") *Triennial Review Order*¹ the Public Utilities Commission of the State of Hawaii (the "Commission") filed Order No. 20471 opening this docket and requiring Verizon Hawaii Inc. ("Verizon"), among others, to notify the Commission of its duly authorized representative(s) for the docket. The Commission bifurcated the docket into parts – a 90-day review and a 9-month review. Verizon does not anticipate any need for a proceeding under either part.² However, in the event that the Commission proceeds with either part, Verizon's representatives in this docket are Joel K. Matsunaga, Vice President-External Affairs, and myself. Our address is 1177 Bishop Street, Honolulu, Hawaii 96813.

For Part I (90-day review) Verizon does not propose to proceed and does not believe that any proceeding can be sustained. For Part II (9-month review) no proceeding is required. The FCC made a nationwide impairment finding for mass market switching and empowered state commissions to determine whether "requesting telecommunications carriers are not impaired in a particular market," or whether, if impairment does exist in a particular market, it could be "cured by implementation of transitional unbundled local circuit switching in a given market and has

¹ *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338, Report and Order, and Order on Remand and Further Notice of Proposed Rulemaking (re. August 21, 2003).

² Verizon's comments assume that the rules promulgated pursuant to the *Triennial Review Order* became effective as scheduled and are submitted without prejudice to Verizon's position that numerous provisions of the *Triennial Review Order* are contrary to law and that the courts should stay and vacate them.

Public Utilities Commission
of the State of Hawaii
October 20, 2003
Page 2

implemented such transitional process”³ The rules also authorize state commissions to review the possibility of implementing a “batch” hot cut process to address certain FCC findings concerning operational impairment with respect to local switching. However, only in the markets for which it has been asked to evaluate impairment must a commission either establish a batch cut process or issue detailed findings explaining why such a process is unnecessary.⁴

The FCC standards for ILECs to mount such a case are quite high. In fact, Verizon believes that the standards are fundamentally at odds with the requirements of the 1996 Act and instead are designed solely to ensure the continued availability of the UNE platform in most markets, regardless of the facts. For that reason, Verizon has determined that it will not challenge the FCC’s impairment findings in Hawaii during the period allowed for a 9-month case. Accordingly, there is no need to proceed with Part II of this docket.

Very truly yours,



LESLIE ALAN UEOKA
Assistant General Counsel

c: Initial TRO Parties (as defined in Order No. 20471)

³ Rule 319(d)(2).

⁴ 47 C.F.R. § 51.319(d)(2)(i) & (ii).

**OSHIMA CHUN
FONG & CHUNG LLP**
A LIMITED LIABILITY LAW PARTNERSHIP

October 28, 2003

HAND DELIVER

Public Utilities Commission
Kekuanaoa Building, First Floor
465 South King Street
Honolulu, Hawaii 96813

FILED
2003 OCT 28 P 2:23
PUBLIC UTILITIES
COMMISSION

Re: Docket No. 03-0272

Dear Commissioners and Staff:

This letter is filed on behalf of AT&T Communications of Hawaii, Inc. ("AT&T") in response to Verizon Hawaii, Inc.'s ("Verizon") October 20, 2003 letter filed with the Commission.

In its letter, Verizon notified the Commission that no proceeding is required for either the 90-day review process or the 9-month review process ordered by the Federal Communications Commission ("FCC") in the *Triennial Review Order*. More specifically, Verizon states that it accepts the impairment finding for mass market switching for the State of Hawaii. Verizon further indicates that it will not attempt to develop the batch hot cut process that would allow for a finding of non-impairment.

It is laudable for Verizon to preserve the resources of the Commission, competitors and all interested parties on what would have been a very complex issue with a predictable outcome – a finding of continued impairment. However, Verizon's acknowledgement that there is no need to conduct an impairment analysis for mass market switching does not completely eliminate the need for Commission evaluation pursuant to the *Triennial Review Order*. The FCC also has tasked the state commissions with the very important determination of defining "mass market." The demarcation between the mass market and the enterprise market will be based on each state commission's determination of the appropriate number of DS-0 loops that a competitive local exchange carrier may provision to a specific customer location in combination with incumbent provided switching. See *Triennial Review Order* ¶ 497 ("At some point, customers taking a sufficient number of multiple DS0 loops could be served in a manner similar to the that described above for enterprise customers – that is voice services provided over one or several DS1s . . . Therefore, as part of the economic and operational analysis discussed below, a state must determine the appropriate cut-off for multi-line DS0 customers as part of its more granular review.") (internal footnote omitted).

Verizon's waiver of any claim that mass market customers are not impaired by the unavailability of switching does not eliminate the need for the Commission to make the "cut-off" determination discussed in ¶ 497 of the *Triennial Review Order*. While the FCC indicated that at some point it may be viable to aggregate loops at a customer location and provide service at a DS-1 capacity level, a state-specific analysis is required to determine the costs of purchasing multiplexing and related equipment and a high-capacity line to replace DS-0 loops. This is a very important competitive issue, because competition is just beginning to develop for small business customers, who deserve the full benefit of the competitive options enjoyed by larger customers.

AT&T believes that the facts will establish that the cut-off for provisioning multi-line customer locations in Hawaii is much higher than the four-line cut-off previously suggested by the FCC for the top 50 MSAs. (In its *UNE Remand Order*, the FCC established a switching "carve-out," under which ILECs are not obligated to provide unbundled circuit switching for carriers serving customers with four or more DSO loops at a location in density zone 1 of the top 50 MSAs where EEL combinations were available. See *UNE Remand Order* ¶¶ 276-98; see also *Triennial Review Order* ¶ 497. This "carve out" does not apply to Hawaii, which does not include any of the top 50 MSAs. See *UNE Remand Order* Appx. B.) The determination of the appropriate cut-off is much too important to be left undefined.

Therefore, AT&T urges the Commission to establish a schedule that develops evidence and results in a Commission determination, as called for in ¶ 497 of the *Triennial Review Order*, of the maximum number of DS-0 loops at a location that may be purchased in connection with unbundled local switching from Verizon Hawaii.

Thank you for your attention to this matter. Please feel free to contact the undersigned if you should have any questions.

Very truly yours,



Michael H. Lau

cc: Consumer Advocate
Stephen S. Melnikoff, Esq. (DOD)
Rochelle D. Jones (TWTC)
J. Douglas Ing, Esq. (TWTC)
Lisa Suan (PLNI)
Laura Mayhook, Esq. (PLNI)
Joel K. Matsunaga (Verizon)
Leslie Alan Ueoka, Esq. (Verizon)
Stephen H. Kukta, Esq. (Sprint)

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November 7, 2003

WRITER'S DIRECT DIAL NUMBER:

808-546-2898

PUBLIC UTILITIES
COMMISSION

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FILED

Public Utilities Commission
of the State of Hawaii
465 South King Street, First Floor
Honolulu, Hawaii 96813

Re: Docket No. 03-0272 - In the Matter of Public Utilities Commission Instituting a Proceeding to Implement the Federal Communications Commission's ("FCC") *Triennial Review Order*, FCC No. 03-36

Honorable Commissioners and Staff:

I am writing in response to AT&T Communications of Hawaii, Inc.'s ("AT&T") letter of October 28, 2003, which contains a number of misleading assertions that Verizon Hawaii Inc. ("Verizon") would like to correct for the record. In addition, as explained below, Verizon does not object to AT&T's request for a more immediate determination of the cross over point between enterprise and mass market customers.

First, AT&T contends that Verizon "accepts" the impairment finding for mass market switching for the State of Hawaii. This is not correct. Verizon does not believe that CLECs are "impaired" without access to mass market switching in Hawaii. However, given the improperly restrictive unbundling standards set forth by the Federal Communications Commission ("FCC") – standards that Verizon is currently challenging in proceedings before the United States Court of Appeals for the District of Columbia Circuit – and the significant burden of completing an impairment review within nine months, Verizon has declined to challenge the FCC's impairment presumption at this time. In the event that the FCC's current unbundling rules are upheld by the courts, Verizon may in a subsequent proceeding demonstrate that CLECs are in fact not impaired without access to mass market switching – an approach contemplated by the FCC. See *Triennial Review Order* ¶ 526 ("We emphasize here that the framework set forth here contemplates ongoing state review of the status of unbundled switching."). Verizon has merely declined to make this showing at this time. This is not a "waiver of any claim," as AT&T states.

Second, AT&T asserts that Verizon "indicates that it will not attempt to develop the batch hot cut process that would allow for a finding of non-impairment." This too is incorrect. As Verizon noted in its October 20th letter, only in the markets for which it has been asked to evaluate impairment must a commission either establish a batch cut process or issue detailed findings explaining why such a process is unnecessary. 47 C.F.R. § 51.319(d)(2)(i) & (ii). Any other approach would be a waste of Commission resources. The Commission should note that AT&T's suggestion that Verizon must develop a new batch cut process is at odds with the *Triennial Review Order*. See *id.* & *Triennial Review Order* ¶ 490.

Finally, Verizon does not object to AT&T's request to address the cross over point between enterprise and mass market customers.¹ This issue can be addressed succinctly and efficiently. There is ample CLEC evidence as to this cross over point, since it is a determination that AT&T and other CLECs make every day in the marketplace, when they decide whether to use multiple DS0s or a DS1 to serve a new multi-line customer. Therefore, Verizon respectfully proposes that the Commission require AT&T and all other CLECs operating in Hawaii each to set forth in a sworn affidavit the cross over point it employs in the marketplace, as well as the factual basis (including any and all economic and operational assumptions) for this determination. In an accompanying brief, each carrier can argue, if it likes, that the number that the carrier uses in practice should not be adopted by the Commission. Verizon would then respond to these filings, after which the Commission, based on these submissions, can make its cross over determination.

¹ As the Commission is aware, for purposes of unbundled switching, the FCC has drawn a distinction between "mass market" and "enterprise" customers. Mass market customers include both residential customers and small business customers that "purchase multiple DS0s at a single location." *Triennial Review Order* ¶ 497. The FCC has assigned to state commissions the task of determining the "cross over point" between these two categories of customers: that is, "the point where it makes economic sense for a multi-line customer to be served by a DS1 loop." *Triennial Review Order* ¶ 497. Those multi-line customers that could be economically served by a DS1 loop are by definition enterprise customers.

AT&T indicates that the "facts will establish" that this "cross over point" between enterprise and mass market customers is "much higher" than the four-line "cut-off" that the FCC has established for density zone one of the top 50 MSAs. AT&T's position is not surprising; it is consistent with the position it took during the FCC's own *Triennial Review* proceeding, in which AT&T asserted without qualification that the proper cross over point between enterprise and mass market customers served by multi-line DS0s is 18-19 lines. Comments of AT&T Corp. at 204-205, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 01-338 (FCC filed Apr. 5, 2003) (the "economic equivalent" of a DS-1 or higher capacity loop is "approximately 18-19 lines.").

Public Utilities Commission
of the State of Hawaii
November 7, 2003
Page 3

If the Commission decides to determine the cross over point at this time, Verizon would be happy to work cooperatively with AT&T and other CLECs to develop a filing schedule.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. Ueoka', with a long horizontal flourish extending to the right.

LESLIE ALAN UEOKA
Assistant General Counsel

c: Initial TRO Parties

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding to)
Implement the Federal)
Communications Commission's)
("FCC") Triennial Review Order,)
FCC No. 03-36.)
_____)

DOCKET NO. 03-0272

ORDER NO. 20712

Filed Dec. 11, 2003
At 1:00 o'clock P.M.

Karen Higashida
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)	
PUBLIC UTILITIES COMMISSION)	Docket No. 03-0272
Instituting a Proceeding to)	Order No. 20712
Implement the Federal)	
Communications Commission's)	
("FCC") <i>Triennial Review Order</i> ,)	
FCC No. 03-36.)	
_____)	

ORDER

I.

Background

The commission initiated this proceeding to implement the Federal Communications Commission's ("FCC") *Triennial Review Order*¹ by Order No. 20471, filed on September 29, 2003 ("Order No. 20471" or the "Order").²

¹In *Re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; and *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147; Report and Order on Remand and Further Notice of Proposed Rulemaking; FCC No. 03-36; Adopted February 20, 2003; Released August 21, 2003 ("*Triennial Review Order*" or "*TRO*").

²The FCC established new rules governing the obligations of incumbent local exchange carriers ("ILECs") to make elements of their network available on an unbundled basis to competitive local exchange carriers ("CLECs") and, among other things, delegated to state commissions, pursuant to section 251(d)(2) of the Telecommunications Act of 1996, the task of undertaking proceedings to determine the unbundling obligations of ILECs concerning certain network elements in specific geographic markets through the *TRO*.

The commission, in Order No. 20471, also:

- (A) Designated the current Docket No. 7702 parties--the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"); AT&T COMMUNICATIONS OF HAWAII, INC. ("AT&T"); PACIFIC LIGHTNET, INC. ("PLNI"); SPRINT COMMUNICATIONS COMPANY, L.P. ("Sprint"); TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS ("Oceanic"); UNITED STATES DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES ("DOD"); and VERIZON HAWAII INC. ("Verizon Hawaii")--as initial parties to this proceeding (collectively, "Initial TRO Parties"), and ordered them to either file a letter notifying the commission of their duly authorized representative(s) for this docket, or submit a written request for commission approval to withdraw from this docket within twenty (20) days from the filing of the Order;
- (B) Invited any interested individual, entity, or community or business organization to intervene as a party or to participate without intervention in this proceeding by filing a motion to intervene as a party or to participate without intervention not later than twenty (20) days from the filing of the Order; and
- (C) Required any CLEC wishing to rebut the FCC's no impairment finding for switching for large business customers served by large capacity loops, such as DS-1s, in a proceeding before the commission ("90-day Proceeding") to file a motion to proceed with the 90-day Proceeding, in adherence with specific filing requirements, within twenty (20) days from the filing of the Order.

The Initial TRO Parties to this docket submitted filings in accordance with Order No. 20471. Specifically, AT&T filed its notification letter on October 13, 2003; Oceanic and the DOD filed their notification letters on October 15, 2003; PLNI filed its notification letter on October 17, 2003; Verizon Hawaii filed its notification letter on October 20, 2003

("Verizon Hawaii's Notification Letter"); and the Consumer Advocate filed its notification letter on October 21, 2003. Sprint, on the other hand, filed a letter requesting commission approval to withdraw from this proceeding on October 20, 2003 ("Withdrawal Request").

DIRECT TELEPHONE COMPANY INC. ("DTC") filed its motion to intervene in this proceeding on October 17, 2003 ("DTC's Motion to Intervene"). SANDWICH ISLES COMMUNICATIONS, INC. ("SIC") filed a motion to intervene in this docket also on October 17, 2003 ("SIC's Motion to Intervene"). MCIMETRO ACCESS TRANSMISSION SERVICES, INC. ("MCImetro") filed its motion to intervene in this proceeding on October 20, 2003 ("MCImetro's Motion to Intervene"). No other persons moved to intervene in this docket.

II.

Compliance Filings

A.

Filings of Initial TRO Parties

AT&T, Oceanic, DOD, PLNI, the Consumer Advocate, and Verizon Hawaii timely filed their respective notification letters.³ Sprint indicates that it did "not wish to participate in the docket" since the docket will not impact its business in Hawaii because Sprint does not use unbundled network elements in

³Under Hawaii Administrative Rules ("HAR") §§ 6-61-22 and 6-61-21(e), the deadline for the Initial TRO Parties to submit their respective filings to the commission was Tuesday, October 21, 2003.

Hawaii. We note that Sprint's Withdrawal Request was timely filed.

The commission finds that the Initial TRO Parties have complied with the filing requirements of the Order. We also find good cause to approve Sprint's withdrawal from this docket, and we conclude that Sprint's Withdrawal Request should be approved.

B.

Motions to Intervene

DTC's, SIC's, and MCImetro's motions to intervene were filed pursuant to Order No. 20471, which invited any interested individual, entity, or organization to file a motion to intervene or participate without intervention within twenty (20) days of the date of the Order, in compliance with all applicable rules of HAR Chapter 6-61. DTC's, SIC's, and MCImetro's motions to intervene were all timely filed, and there were no oppositions to any of these motions to intervene.

1.

DTC's Motion to Intervene

DTC is a CLEC authorized to provide telecommunications services in the State of Hawaii.⁴ DTC requests commission

⁴DTC was granted a certificate of authority ("COA") to operate as a reseller of telecommunication services in the State of Hawaii ("State") through Decision and Order No. 19265, filed on March 25, 2002, in Docket No. 01-0460. DTC's COA was amended to allow it to provide telecommunications services also as a facilities-based carrier by Decision and Order No. 19840, filed on December 4, 2002, in Docket No. 02-0209. The commission granted DTC's request to provide shared tenant services, on a temporary basis, in Interim Decision and Order No. 20410, filed on August 29, 2003, in Docket No. 03-0240.

approval to intervene in Parts I and II of this docket.⁵ DTC specifically makes reference to various criteria set forth in HAR § 6-61-55. DTC represents that as a "responsible contributor" to the State's economy, it wishes to support DTC's services in the State through active involvement in this docket and wants to provide CLEC input on the needs "for a fully competitive environment and a level playing field with the ILEC."⁶ DTC also contends that it will be precluded from providing input on issues important to CLEC services to enterprise and mass-market customers through unbundled network element platform without intervention in this docket, and states that intervention in this docket represents its only means to protect its interests which cannot be fully represented by any existing party to this docket. Moreover, DTC contends that it can assist in the development of a sound record and requests that it be granted the same party status that other CLECs currently enjoy.

⁵The commission indicated in Order No. 20471 that our implementation of the FCC's requirements under the TRO will be conducted in two distinct and separate parts. The FCC gave state commissions ninety (90) days from the effective date of the order to rebut the FCC's "national finding" of no impairment for switching for large business customers served by large capacity loops ("90-day Review"). Additionally, the FCC gave state commissions nine (9) months from the effective date of the TRO to determine whether or not economic and operational impairment exist in particular geographic markets for mass-market customers ("9-month Review"). The commission stated that it would address its 90-day Review obligations in Part I of this proceeding and its obligations associated with a 9-month Review in Part II of this proceeding.

⁶See, DTC's Motion to Intervene at 4.

SIC's Motion to Intervene

SIC states that it is the State's sole rural local exchange carrier. SIC represents that it was issued an exclusive license to provide intrastate telecommunications services on lands administered by the Department of Home Lands of the State of Hawaii ("DHHL") in 1995. In 1997, the commission granted SIC a COA to provide telecommunications in the State, restricted to providing these services to lands administered by the DHHL.⁷ SIC seeks to intervene in this docket to protect its interests as the sole provider of telecommunications on lands administered by the DHHL. SIC argues that it is not a CLEC and contends that it has an interest in interconnection arrangements with Verizon Hawaii as an ILEC to ILEC, and states that participating as a party to this docket is the only means to protect its interests. As such, SIC states that the existing parties to this proceeding cannot adequately represent its interests. SIC also states that it will assist in the development of a sound record by clarifying: (1) that there are "two ILECs operating in the State"; and (2) "ILEC to ILEC interconnection requirements consistent with the public interest."⁸ SIC contends that the issues it raises will only serve to clarify its status as a provider of telecommunications services in the State and that its intervention should not impact or delay the proceedings in this docket.

⁷See, Order No. 16078, filed on November 14, 1997, in Docket No. 96-0026.

⁸See, SIC's Motion to Intervene at 4.

MCImetro's Motion to Intervene

MCImetro, an authorized provider of telecommunications services in the State,⁹ seeks to intervene in Part II of this proceeding. MCImetro is intervening in this proceeding to provide input since it expects this proceeding will affect the provision of telecommunications services to its Hawaii customers. While it recognizes that some of its interests may overlap with the interests of existing parties to this proceeding, MCImetro contends that its interests will not be fully and adequately represented without intervention in this proceeding and that there is no other reasonable means to protect its interests. MCImetro represents that participation from all major telecommunications providers is consistent with purposes of an investigatory proceeding, and that its intervention in this proceeding will not broaden the issues or unduly delay this proceeding. Furthermore, it contends that it will assist us in developing a sound record and help to insure that our determinations are just and reasonable.

Intervention Findings and Conclusions

Intervening as a party in commission proceedings is governed by HAR § 6-61-55. Specifically, HAR § 6-61-55(d) states that intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden

⁹See, Decision and Order No. 15898, filed on September 10, 1997, in Docket No. 97-0190.

the issues. The Supreme Court of Hawaii clarified that party status through intervention in a proceeding before the commission "is not a matter of right but is a matter resting within the sound discretion of the commission."¹⁰

The commission initiated this docket to investigate, implement, and address our obligations under the TRO, specifically those associated with a 90-day Review and 9-month Review. To this end, we invited any interested individual, entity, or organization to intervene as a party or to participate without intervention in this proceeding by filing a motion to do so in an effort to "encourage public input and to ensure, as much as possible, a comprehensive examination of the issues".¹¹ We find that DTC, SIC, and MCImetro each have an interest in the proceedings in this docket since they each provide telecommunications services in the State, and granting their intervention request should, at this time, be reasonably pertinent to and should not unreasonably broaden the issues associated with our investigation. Their participation in this docket will, we believe, assist us in our investigation and in the development of a sound record. Accordingly, we conclude that

¹⁰See, *In re Application of Hawaiian Electric Company, Inc.*, 56 Haw. 260, 262 (1975).

¹¹See, Order No. 20471 at 5.

DTC's, SIC's, and MCImetro's motions to intervene should be granted, subject to the conditions set forth below.¹²

We must remind DTC, SIC, and MCImetro that their participation in this docket is limited to the matters that are reasonably pertinent to these proceedings. Specifically, we stress that the commission's focus in these proceedings is limited to only the issues related to our review and obligations associated with a 90-day Review and 9-month Review under the TRO. In light of the short timeframes established by the FCC, we may reconsider and/or limit DTC's, SIC's, and MCImetro's participation as parties to this docket if we determine that they are either unreasonably broadening the issues pertinent to our review and obligations under the TRO or unduly delaying the proceedings in this docket.

C.

Part I: 90-Day Review

The FCC gave state commissions 90 days from the effective date of the TRO to rebut its "national finding" that competitors are not impaired without access to an ILEC's circuit switching when serving enterprise customers through high capacity

¹²We clarify, at this time, that SIC is being granted intervention in this proceeding as an authorized provider of telecommunications services in Hawaii, restricted to providing services on lands administered by the DHHL and other representations made in its motion, and not on its claim that it is an ILEC. If SIC desires to pursue its ILEC status claim, it must do so in a proceeding separate and apart from the proceedings in this docket since a review of its ILEC status claim is not, we believe, reasonably pertinent to the issues associated with this docket, and a review of SIC's claim would unduly delay these proceedings.

loops ("No Impairment Finding").¹³ Due to the short time frame and other TRO requirements associated with a 90-day Review, the commission determined that it was reasonable to go forward with a 90-day Review of the FCC's No Impairment Finding upon a filing of a motion for the commission to proceed ("Motion to Proceed") by a CLEC within twenty (20) days from the filing of the Order.¹⁴ The commission reasoned that it would result in a waste of the commission's resources and impede the commission's ability to timely adhere to the FCC's deadline if we proceed without a Motion to Proceed.

No Motion to Proceed was filed in this proceeding within the parameters set forth in Order No. 20471. Without a filing of a Motion to Proceed by a CLEC, we believe that a 90-day Review of the FCC's No Impairment Finding is unsustainable and that such a review should not be embarked upon. The commission does not have the resources and necessary information to embark on such a proceeding without some indication from Hawaii's CLEC community that the FCC's No Impairment finding should be rebutted, especially within the FCC's TRO expedited time line. Thus, we conclude that this commission should not undertake a 90-day Review of the FCC's No Impairment Finding.

¹³See, TRO at ¶ 421.

¹⁴See, Order No. 20471 at 6.

III.

Part II: 9-month Review

The commission initially moved forward with its 9-month Review in this docket under the assumption that such an analysis was sustainable in Order No. 20471. The commission informed the Initial TRO Parties and all reviewers of the Order that it would require the parties to this docket to meet informally to develop a stipulated protective order, if necessary, and a stipulated procedural/prehearing order to govern the matters of our 9-month Review in Part II of this proceeding.

In Verizon Hawaii's Notification Letter, Verizon Hawaii conveys its belief that there is no need for proceedings in either parts of this docket. Verizon Hawaii contends that a 90-day Review is unsustainable and that such a review should not proceed. Regarding Part II of this docket, Verizon Hawaii suggests that no proceeding is necessary since "it will not challenge the FCC's impairment findings in Hawaii during the period allowed for a 9-month case."¹⁵ Additionally, Verizon Hawaii suggests that a review of its hot cut process to develop and implement a batch cut process is unnecessary since the commission's hot cut/batch cut obligations under the TRO are triggered only in markets where an impairment evaluation is being requested. The FCC, in ¶ 488 of the TRO, specifically required state commissions to approve a batch cut migration process to be implemented by ILECs to address the cost and timeliness of the hot cut process or make a detailed finding explaining why such a

¹⁵See, Verizon Hawaii's Notification Letter at 2.

process is unnecessary within nine (9) months of the effective date of the TRO ("Hot Cut/Batch Cut Requirements"). Verizon Hawaii appears to indicate that it is unnecessary to conduct a review of its hot cut process since Verizon Hawaii is not challenging the FCC's impairment finding in any Hawaii markets within the TRO 9-month Review period.

AT&T submitted a letter dated October 28, 2003 ("AT&T's Comments") to address certain statements set forth in Verizon Hawaii's Notification Letter. AT&T disagrees with Verizon Hawaii's suggestion that a 9-month Review is unnecessary. AT&T contends that the FCC requires state commissions to determine what constitutes "mass-market" in ¶ 497 of the TRO, and states that Verizon Hawaii's "waiver of any claim that mass[-]market customers are not impaired by the unavailability of switching does not eliminate the need for the [c]ommission to make the cut-off determination discussed in ¶ 497 of the" TRO.¹⁶ Accordingly, AT&T urges the commission to establish a schedule that results in the determination "of the maximum number of DS-0 loops at a location that may be purchased in connection with unbundled local switching from Verizon Hawaii"¹⁷ as required under ¶ 497 of the TRO.

Verizon Hawaii filed a statement on November 7, 2003, in response to AT&T's Comments (Verizon Hawaii's Comments). Verizon Hawaii clarified that it "declined to challenge" the FCC's impairment finding, at this time, as opposed to accepting

¹⁶See, AT&T's Comments at 2. Internal quotes deleted.

¹⁷*Ibid.*

the FCC's impairment finding as misstated by AT&T. Verizon Hawaii also states that it opposes AT&T's assessment of Verizon Hawaii's position on the issue of developing a batch hot cut process and asserts that AT&T's suggestion that a new batch cut process must be developed conflicts with the TRO. Furthermore, Verizon Hawaii states that it does not object to AT&T's contention that the cross-over point for enterprise and mass-market customers be addressed, and states that it is willing to work with AT&T and the other parties to this docket to establish a filing schedule to address this matter.

We acknowledge Verizon Hawaii's decision in this proceeding to not challenge the FCC's impairment finding in any of Hawaii's markets during the time allotted for a 9-month Review; however, we believe it is premature to assume that a 9-month Review is unnecessary, as Verizon Hawaii initially suggested. AT&T advances a position that a cut-off determination under ¶ 497 for mass-market and enterprise customers is an issue to be addressed in this proceeding. Additionally, we are not fully convinced that the commission is relieved of its obligations under the FCC's Hot Cut/Batch Cut Requirements since the FCC made its national finding of impairment for mass-market customers based largely on its determination that economic and operational barriers for the cut over process results in the impairment. We believe that it is premature to conclude that an evaluation of Verizon Hawaii's hot cut process and the development of a new batch cut process are unnecessary. We believe that input from all parties to this docket [the Initial TRO Parties and the parties to this proceeding named in

this order (collectively, the "TRO Parties")], on this issue is warranted.

Due to the short deadlines in this proceeding, the commission finds it appropriate and in the public interest to require the TRO Parties to meet informally in an effort to formulate the issues, a schedule of proceedings, and all other procedural matters necessary to govern the review under the 9-month Review time line in a stipulated prehearing order. The stipulated prehearing order must be submitted for our consideration and approval within thirty (30) days from the date of this order. If unable to stipulate to such an order, each party is required to submit separate proposed prehearing orders for our review and consideration within thirty (30) days from the date of this order.

During the informal meeting, we suggest that the TRO Parties attempt to discuss and develop a procedural schedule that incorporates the parties' "final briefs" or "reply briefs", if any, to be filed on or about June 2, 2004, since the FCC's 9-month deadline for the commission to complete its review expires on July 2, 2004. Additionally, when developing the issues to be addressed in this proceeding, the parties should consider and include, if necessary, the following matters:

- (1) What is the appropriate cross over point between enterprise and mass-market customers?
- (2) Is a review of Verizon Hawaii's hot cut process and the development a new batch cut process, if found warranted, necessary under the TRO when Verizon Hawaii has decided to not challenge the

FCC's finding of impairment in any of the State's markets during the 9-month Review?

- (3) What type of procedures should be developed to conduct continued reviews for unbundled switching under ¶ 526 of the TRO? Should the procedures include a notification requirement?

The above list of issues to consider is not exhaustive, and is provided for the TRO Parties' consideration when developing the issues to be addressed in this proceeding consistent with the FCC's TRO requirements under the 9-month Review.¹⁸ The TRO Parties also should meet informally to discuss whether or not a stipulated protective order for this proceeding is necessary. The stipulated protective order also should be filed for the commission's consideration and approval within thirty (30) days from the date of this order. If unable to stipulate to such an order, each party should submit separate proposed protective orders for our review and consideration within thirty (30) days from the date of this order.¹⁹

¹⁸The commission envisions having all TRO filings made in this docket accessible for the public's inspection on the commission's website at <http://www.hawaii.gov/budget/puc/puc.htm>. At this time, we request each party to this docket to submit an electronic copy of all its filings (including those previously filed) to the commission's general electronic mail address at Hawaii.PUC@hawaii.gov for up-loading on to the commission's website.

¹⁹If a stipulated protective order or proposals of protective orders are not filed within the 30-day deadline, the commission will assume that no protective order is necessary.

IV.

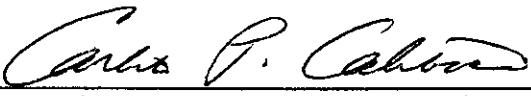
Orders

THE COMMISSION ORDERS:

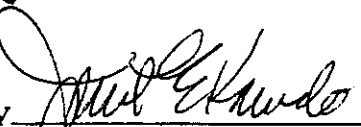
1. Sprint's Withdrawal Request is approved.
2. The motions to intervene by DTC, SIC, and MCImetro, to the extent requested in their respective motions, are granted, subject to the conditions set forth in Section II.B.4 of this order. Thus, DTC, SIC, and MCImetro join the Consumer Advocate, AT&T, DOD, PLNI, Oceanic, and Verizon Hawaii as parties to this docket.
3. A 90-day Review of the FCC's No Impairment Finding shall not be undertaken.
4. The TRO Parties shall meet informally to formulate the issues, a schedule of proceedings, and all other procedural matters necessary to govern the review under the 9-month Review time line in a stipulated prehearing order. The stipulated prehearing order must be submitted for our consideration and approval within thirty (30) days from the date of this order. If unable to stipulate to such an order, each party is required to submit separate proposed prehearing orders for our review and consideration within thirty (30) days from the date of this order.
5. The TRO Parties also shall meet informally to discuss whether or not a stipulated protective order for this proceeding is necessary and make such a filing, if such an order is warranted, in this docket under the parameters set forth in Section III of this order.

DONE at Honolulu, Hawaii this 11th day of December,
2003.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

03-0272.en

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20712 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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Karen Higashi

DATED: December 11, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of

PUBLIC UTILITIES COMMISSION

Instituting a Proceeding to Implement the
Federal Communications Commission's
("FCC") *Triennial Review Order*, FCC No.
03-36

)
)
) DOCKET NO. 03-0272
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PROTECTIVE ORDER NO. 20761

STIPULATION FOR PROTECTIVE ORDER

EXHIBIT "A"

and

CERTIFICATE OF SERVICE

Filed January 15, 2004

At 1:30 o'clock P.m.

Karen Hignett.
Chief Clerk of the Commission

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of)	
)	
PUBLIC UTILITIES COMMISSION)	DOCKET NO. 03-0272
)	
Instituting a Proceeding to Implement the)	
Federal Communications Commission's)	
("FCC") <i>Triennial Review Order</i> , FCC No.)	
03-36)	
_____)	

STIPULATION FOR PROTECTIVE ORDER

WHEREAS, the Public Utilities Commission of the State of Hawaii ("Commission") has initiated a proceeding to implement the Federal Communications Commission's ("FCC") Triennial Review Order, FCC No. 03-36;

WHEREAS, the Parties to the proceeding are Verizon Hawaii Inc. ("Verizon"), Department of Commerce and Consumer Affairs, Division of Consumer Advocacy (the "Consumer Advocate"), AT&T Communications of Hawaii, Inc. ("AT&T"), Pacific LightNet, Inc. ("PLNI"), Time Warner Telecom of Hawaii, L.P. dba Oceanic Communications ("Time Warner"), the United States Department of Defense and All Other Federal Executive Agencies ("DOD"), Direct Telephone Company Inc. ("DTC"), Sandwich Isles Communications, Inc. ("SIC") and MCImetro Access Transmission Services, Inc. ("MCImetro") (individually, a "Party" and collectively, the "Parties");

WHEREAS, the Parties anticipate that during the course of this proceeding, information considered to be confidential by a Party may be requested or filed;

WHEREAS, the Parties desire to establish a set of procedures and provisions pertaining to the use and disclosure of information considered to be confidential and any information that any Party may in the future contend to be confidential;

WHEREAS, the Parties understand that during the course of the evidentiary hearing in this matter, if any, if it becomes necessary to address any information provided pursuant to this protective order during the course of the hearing, that portion of the proceeding will be heard as provided for in paragraph 18, below; and

WHEREAS, the Parties understand and recognize that if any information is requested that is considered confidential by a vendor of a Party, additional agreements and protection may be needed before the release of such information, under additional confidential protection, can be accomplished;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, in accordance with Section 6-61-50 of the Rules, that the Commission issue a protective order covering the confidential information identified in the course of this phase of the proceeding and concerning the appropriate DS-0 cross over point:

TERMS OF THE ORDER

1. This protective order governs the classification, acquisition, and use of trade secrets and other confidential information produced by any Party in Part II of this docket.
2. All Parties or participants to all or any portion of this docket, including persons who are granted intervention or participation after the effective date of this protective order, shall be subject to this protective order and shall be entitled to all